

Great Lakes Fishery Leadership Institute - Treaty issues

Historical Introduction: Lake Superior's Fishery - The Big Water (Video)

- Tribes have a long history of commercial fishing going back to the French - before US was a nation.
- Tribes are sovereign governments who negotiated treaties with European and U.S. governments.
- Tribes "reserved" the rights to hunt and fish, similar to individuals selling land and reserving mineral rights. Federal Courts **did not** "give" tribes their treaty rights.
- Treaties are the Supreme Law of the Land.
- Specific treaties pertain to specific geographical areas. **Note Treaty Rights - 2003 Edition Handout page 4.**

Legal: Treaty Fishing has been reaffirmed by numerous state and federal court cases going back over 62 years. Earlier federal court decisions set precedent for treaty issues being litigated today.

Note Treaty Rights - 2003 Edition Handout pages 35-41

- **1942 Tulee vs. the State of Washington:** The U.S. Supreme Court decided that because a treaty takes precedence over state law, Indians with tribal treaty rights can't be required to buy state licenses to exercise their treaty fishing rights. This was also the first case to rule that state regulation of treaty fisheries can only be for purposes of conservation.
- **1969 U.S. vs. Oregon (Belloni decision):** Federal Judge Belloni held that the state is limited in its power to regulate treaty Indian fisheries. The decision indicated the state may only regulate when "reasonable and necessary for conservation," and state conservation regulations must not discriminate against the Indians and must be the least restrictive means.
- **1971 People of the State of Michigan v. William Jondreau (Jondreau decision):** Reversed People v. Chosa (1930), 252 Michigan 154, 233 N.W. 205. The Jondreau decision reaffirmed the right of the Keweenaw Bay Indian Community members to fishing the Keweenaw Bay waters of Lake Superior without regard to Michigan fishing regulations.
- **1972 Gurnoe vs. Wisconsin (Gurnoe decision):** The Wisconsin Supreme Court decided in favor of the Bad River and Red Cliff tribes. Based on the 1854 Treaty, the court found that fishing in the off-reservation waters of Lake Superior was a protected treaty right and that any regulations that the state seeks to enforce against the Ojibweg are reasonable and necessary to prevent a substantial depletion of the fish supply. The State of Wisconsin and the tribes have successfully negotiated agreements for the treaty commercial fishing activity since the time of the decision.
- **1974 U.S. vs. Washington (Boldt decision):** This decision from the U.S. District Court upheld the right of tribes in the Northwest to fish and to manage fisheries under early treaties; determines they are entitled to an opportunity to equally share in the harvest of fish in their

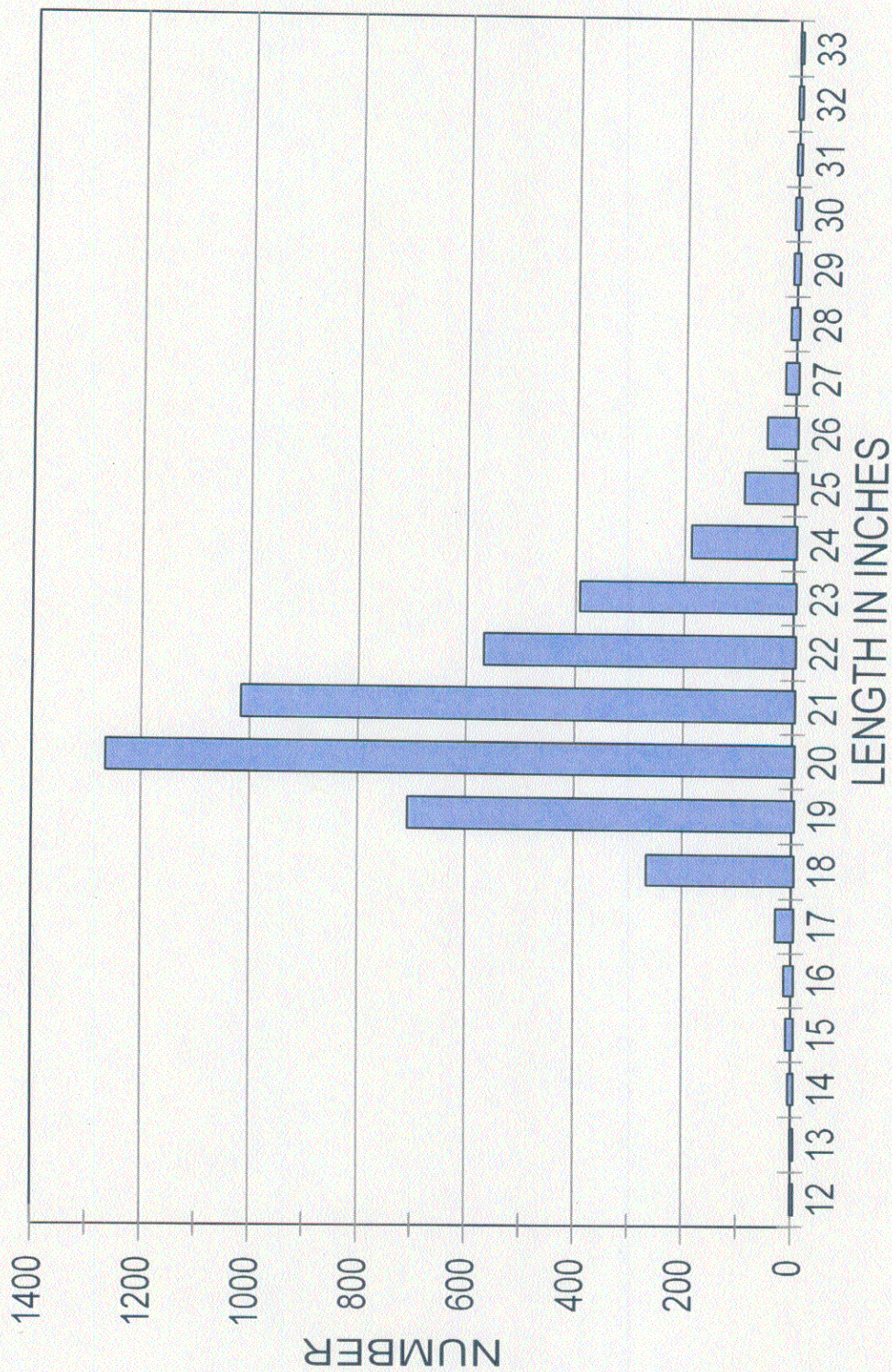
traditional fishing areas, and finds the state regulations which go beyond conserving the fishery to affect the time, place, manner and volume of the off-reservation treaty fishery are illegal. This decision was upheld by the U.S. Circuit Court of Appeals and the U.S. Supreme Court declined to review District Court rulings.

- **1981 United State vs. Michigan (Fox decision):** The U.S. Federal District Court, Western District of Michigan, affirmed the rights of Bay Mills, Sault Ste. Marie and Grand Traverse Bands of Michigan Chippewa to fish in ceded areas of the Great Lakes in the boundaries of Michigan based on the 1836 Treaty. Judge Fox ruled the rights retained were not abrogated by subsequent treaties or congressional acts. Subsequent proceeding also upheld the tribes' rights to regulate their members.
- **1983 L.C.O. vs. WI (Voigt Decision):** The U.S. Court of Appeals for the 7th Circuit agreed with the Lake Superior Chippewa that hunting, fishing and gathering rights were reserved and protected in a series of treaties (i.e. 1837 and 1842) between the Chippewa and the United States government. This ruling was appealed by the State of Wisconsin to the U.S. Supreme Court. On October 3, 1983 The United States Supreme Court refused to hear the appeal of the Seventh Circuit's ruling affirming the ruling of the 7th Circuit.
- **1999 Mille Lacs vs. Minnesota:** The U.S. Supreme Court affirmed treaty hunting, fishing and gathering rights in the Minnesota 1837 ceded territory. This decision, entitled *Minnesota v. Mille Lacs Band*, served to end all debate, begun over twenty years ago when the *Voigt* case was filed in 1974, that the bands' treaty rights exist. The Court ruled in favor of the bands on all three issues, finding that the 1850 Removal Order did not terminate the rights; that Minnesota's statehood in 1858 did not terminate the treaty rights; and that the 1855 Treaty with Mille Lacs did not terminate the band's treaty rights.
- ***Different treaties were litigated through different court cases.*** The resulting rulings have resulted in different regulatory structures governing treaty fishing throughout Lake Superior. For example the Gurnoe decision was litigated in the Wisconsin Supreme court and this court ruling guides the regulatory system implemented in the Wisconsin waters of Lake Superior whereas the Fox Decision provides various federal court rulings that form the basis for tribal regulatory structures governing treaty fishing in 1836 ceded territory.

Biological: - Note handout "Season's of the Ojibwe"

- Treaty commercial fishing targets whitefish - Page 25. Within Lake Superior tribal harvest is comprised of 70% from whitefish, 17% from lake trout, 4% from siscowet trout, and 4% from lake herring. All other species combined comprise only 5% of remaining harvest.
- Tribal harvests are monitored and regulated by tribal natural resource agencies - tribes employ professional fisheries biologists (Pages 25-27) and game wardens to enforce tribal regulations (Pages 43-45).
- Gill nets can be selective fishing gear given the location, season, and size of mesh fished. For example tribal regulations governing Michigan waters of Lake Superior require nets not be set on spawning grounds from Oct. 15 - Oct. 30th and be set below 45 fathoms (270 feet) from Nov. 1 to Nov. 28th. The following graph illustrates that mesh size closely regulates the size of whitefish harvested in 1842 waters.

WHITEFISH LENGTH DISTRIBUTION LAKE SUPERIOR 1842 MICHIGAN WATERS



- Many tribes operate fish hatcheries and contribute to interagency fish stocking programs. Note Pages 22-23.
- Lamprey kill more lake trout than Tribal and State fishermen together. **GLIFWC hand-out.**

Political/Biological:

- Today tribes and their natural resource management agencies play an integral role in management of Lake Superior's Fishery resource and are full partners in the GLFC.
 - The **Lake Superior Technical Committee** consists of fishery biologists from Michigan DNR, Minnesota DNR, Ontario MNR, Wisconsin DNR, the Chippewa-Ottawa Treaty Fishery Management Authority, and the Great Lakes Indian Fish and Wildlife Commission. The Technical Committee's purposes are to:
 - provide agencies represented on the Committee with technical information on the status of stocks including management alternatives and guidelines in making and evaluating fisheries management decisions;
 - arrange for resource persons to assist the members as required;
 - advise the Committee Chairman of any additional funding or other requirements as needed. Note <http://www.glfc.org/lakecom/lsc/lshome.asp>.
- GLIFWC's cooperative projects with State and Federal agencies benefit everyone - examples GLIFWC's Lake Trout Tagging Project, Lake Trout Population Modeling, GIS mapping of spawning habitat.

Conclusion:

- Tribes are not going anywhere and have a vested interest in ensuring the Lake Superior fishery is managed in a sustainable manner for future generations - tribal commercial fishing is something passed on from one generation to the next.
- This is documented in the case where tribes began commercial harvesting the WI waters of Lake Superior under the Gurnoe decision in 1972.
- In 1996 the federal government recognized that lake trout in much of Lake Superior were restored to their historic range therefore stocking was curtailed in those areas. These restored wild lake trout stocks are now managed for full rehabilitation. Full rehabilitation is realized when individual stocks show signs of density dependency i.e. when the number of young of the year fish starts to decline as the number of large fish increases. This has been documented as occurring in WI-2 as well as MI-2, MI-3, and MI-5.
- Lake Superior fishing has historically evolved with new regulatory developments and new technology and will continue to do so.